

Minutes of the Land Use, Parks and Environment Committee - July 18, 2006

The meeting was called to order by Chair Mitchell at 8:32 a.m.

Present: Chair William Mitchell, County Board Supervisors Pauline Jaske, Walter Kolb, Vera Stroud (arrived at 8:47 a.m.), Peter Wolff; **Absent:** Keith Hammitt and Keith Harenda

Staff Present: Legislative Policy Advisor Mark Mader, Committee Secretary Sandra Meisenheimer

Also Present: Parks and Land Use Director Dale Shaver, Planning & Zoning Mgr. Dick Mace, Principal Asst. Corporation Counsel Debbie Price, County Board Supervisors Bonnie Morris and Robert Thelen

Public Present: Bill and Allene Peebles, Alan Quick, Dale and Diane Kolbeck, Ray Peebles and Rob Peebles all of Oconomowoc; Dean Richards (Attorney) of Delafield; Joe Bukovich and Paul Hinkfuss of Mukwonago; and Mark Hertzfeldt of Lisbon

Approve Minutes of: June 20, 2006

Motion: Jaske moved, second by P.Wolff, to approve the minutes of 6/20/06. **Motion carried 4 – 0.**

Read Correspondence

1. Chair Mitchell addressed three letters in regard to the rezoning amendment (Ordinance 161-O-027) in the Town of Oconomowoc: (1) Pattie Galle of Metropolitan Builders Association, (2) William R. Peebles of Oconomowoc, and (3) Attorney Dean Richards of Reinhart, Boerner, Van Deuren Law Firm.
2. Information from Land Resources Mgr. Perry Lindquist in regard to two meetings coming up for the LUPE Committee: (1) SE Area meeting on August 18 from 10:00 a.m. to 12:00 noon at SEWRPC, and (2) annual conservation bus tour on September 21 in Kenosha County. More information will follow.

Public Comment

1. Bill Peebles of Town of Oconomowoc stated he has a dairy farm that has been in his family for 140 years. Their mission statement is to be good stewards of the land and maintain a viable farm operation for generations to come. They are in an area where they still have seven operating dairy farms and several more across the border. They have the last big tract of prime farmland left as they are being encircled by development. The land being developed is prime farmland and is next to their dairy farm on two sides.
2. Robert Thelen (County Board Supervisor) stated regarding the land use of this rezoning, the County Park and Planning Commission voted against it, the Town Board voted it down, and he is recommending that the LUPE Committee vote against it.
3. Jim Koepke of Koepke Farms and a neighbor of Bill Peebles stated they have 600 animal units, 330 milking cows and average about 32,000 pounds of milk being produced per cow per year. He stated that Waukesha County on the east side has a problem with the water table but out where he is the water table is still where it was back in the 1920's. He referred to an article entitled "Ogallala Aquifer Facts" in regard to the water declining and not being replenished.
4. Allene Peebles of Town of Oconomowoc stated the township has a policy book that they follow on zoning, and one thing it says is they will not zone so different districts are incompatibly located next to each other. Also, Waukesha is seeing a 500' drop in their wells. She asked how much more can we see it drop in the county and not protect the aquifers that provide the water. This is a block of farms and once you start breaking up a block, you will have a domino effect.
5. Pattie Galle of Metropolitan Builders Assn. stated that they sent everyone a letter and want to encourage the committees reviewing this rezoning to follow the land use plan.

6. Rob Peebles of Peebles Farms showed a map and referred to the Town of Oconomowoc Master Plan, which he went on to discuss. He pointed out where the farm is and the surrounding area.
7. Ray Peebles of Peebles Farms referred to the land use plan which Metropolitan Builders Assn. says should be followed. He discussed the zoning and objectives, guidelines, etc.

Executive Committee Report by Bill Mitchell on the Meeting of July 17, 2006

Mitchell reviewed two items from yesterday's meeting. The End User Operations & Technology Fund Audit was considered, and also discussed was the number and membership of the County Board standing committees under a 25-member County Board. Mitchell stated that the Executive Committee decided to keep seven standing committees with each committee having seven members, which will probably require each supervisor to serve on two committees.

Meeting Approvals

Motion: Jaske moved, second by Stroud, to approve attendance for Jaske to attend the SE Land Conservation Committee meeting at SEWRPC on August 18, 2006, and to approve attendance for the committee to attend the annual conservation bus tour on September 21 in Kenosha County.

Motion carried 5 – 0.

Appoint Alternate Member from the LUPE Committee to the SE Area Land Conservation Association

Motion: P.Wolff moved, second by Jaske, to nominate Vera Stroud as the alternate member to the SE Area Land Conservation Assn. **Motion carried 5 – 0.**

Consider Proposed Ordinance: 161-O-026 (Text Amendment) Town of Summit. Request: Repeal and recreate Sections 5.04(E)(1)(h) and 5.04(E)(2)(h) as they relate to the setback regulations for driveways along the side property line (ZT-1623)

Mace explained the text amendment which will require a minimum ten ft. side yard offset of a driveway or pavement in order to maintain some separation distance from the adjacent lot line to the edge of the drive for properties in the R-3 District. The proposed amendment would require a ten ft. offset from any property line, although if the residence has side entry garages, the first 30 feet from the front property line shall meet the ten ft. standard and thereafter the driveway can be moved closer to the lot line, but not closer than three feet, in order to properly enter and exit the side entry garage.

The Planning staff is recommending approval. They feel that this is a reasonable approach to accommodating residential designs with side entry garages on smaller lots, which are permitted in certain areas in the Town of Summit.

Motion: Jaske moved, second by Stroud, to approve Ordinance 161-O-026. **Motion carried 5 – 0.**

Consider Proposed Ordinance: 161-O-027: (Architectural Homes by Anders, Inc.) Town of Oconomowoc, Section 9. Part of the NW ¼ of Section 9, T8N, R17E, Town of Oconomowoc. Request: Rezone from the A-T Agricultural Land Preservation Transition District to the R-2 Residential District (SZ-1576A)

Mace reviewed the location of the rezoning amendment in the Town of Oconomowoc, containing approximately 43 acres. The proposed land use originally was for a 14-lot single family residential development but was revised to 12 lots.

Attorney Dean Richards, representing the petitioner, gave a presentation on the rezoning. Dale Kolbeck (developer) also displayed a map of the area. Richards stated there could be a great deal of debate over what structure there should be in Waukesha County for land use planning in townships, but the system in place is the county land use plan. It is the county who is responsible for the land use planning and zoning of this property. The proposal that Mr. Kolbeck has put together has gone through the town and the county staff system. This is the final version that was approved and endorsed for rezoning by the Town of Oconomowoc Plan Commission. When it got to the Town of Oconomowoc Board, it was denied for recommendation, and it was also denied at the County Park and Planning Commission meeting.

Richards said Kolbeck and his company purchased this land based on a plan that was in place with an expectation that this land would be available for residential use. He relied on that plan when he made his investment decision. Richards said this property was sold by the family that originally farmed it anticipating that Kolbeck's Company would be doing residential development. The property was anticipated to transition from agricultural to residential. There is nothing in this residential development that is going to affect the adjoining and abutting farm operation. Richards stated that both county and town staff asked that residential lots north of the subdivision road be eliminated, the number of lots reduced, and all of the lots be south of the roadway. Part of the reason for that was to provide for the very substantial open space that serves as a buffer between the residential operation near the river and the farm operations north of Kolbeck's property.

Richards said he hopes Shaver will go through the history of how this property, for all intents and purposes, since the 1950's has been set for residential development of three acres per residential unit. He stated that some great advantages will come to community and the county as a result of this development. The lot size has been reduced for a cluster development in order to give much more open space, none of these lots go down to or abut the waterfront, the county will continue its greenway corridor project along the Ashippun River, and there will be an environmental buffer zone between the river and the lots. Richards stated they think this is a very advantageous use of the land that was slated for residential development, they are doing nothing to affect the agriculture uses in the area, and are asking the county to respect their land use plan and recommend that this be rezoned for residential use.

Jaske asked when did you make your proposal to purchase this property? Kolbeck said it was two years ago in June which would be 2004.

Shaver stated given the breadth of this issue, he and Mace decided it would be a good idea to spend some time on the past history of the development plan. What they are really arguing for is process and good public input. In 1993 the previous County Executive saw land use conflicts arising in Waukesha County. Finley wanted a comprehensive development plan and Waukesha County became one of the first counties in the state to do it. Over a three-year period a plan was developed and adopted by the County Board in December 1996, effective in January 1997. Shaver said when you write a plan you start with a premise of developing objectives and standards, which he gave examples of. At times, some of the standards conflict and that is why they do comprehensive planning. In the case of the Waukesha County Development Plan, it is more akin to what is being touted as the new "smart growth" law. Shaver stated this rezoning is an issue of competing standards. He also covered transitioning and buffering land uses (agricultural to residential), amendment process done annually because they've learned that there are changes in land use, errors in the planning process, and dealing with plan amendments being brought forward by border agreements by individuals who are speculating in the market. In the case of this rezoning, the staff

is making a recommendation consistent with the plan and consistent with the history of the debate on this particular parcel.

Mace explained the protest petition, which was filed by the neighbors in the area. If it is signed by 50% of surrounding property owners within 300 feet, a higher standard is required to approve a rezone on the subject property. In this case, 90% of adjacent property owners signed so a three-quarters vote of approval of supervisors present will be required at the County Board meeting.

Mace said the basic history has been pretty well covered. He said it is important to note that the Oconomowoc Plan Commission did recommend approval of the rezoning; the Town Board did not approve on a vote of 4-1. Also, because the entire piece is under the shoreland ordinance, their action is advisory (within 1,000 feet of the shoreland applies; shoreland rezones do not require Town Board action). Mace continued by highlighting the four typewritten pages of "Other Considerations" in the staff recommendation and also gave background history as the committee discussed and asked questions.

Kolb said he wants to clarify that the Town did not have any authority to approve or disapprove this particular parcel. Mace said yes, that is correct. Mitchell said the Town is advisory. Kolb asked so it didn't even have to go to the Town Board? Mace said it did not.

Stroud asked are these soils suitable for septic? Mace said yes but he doesn't know if soil tests have been done on individual parcels. However, based on the soil guidelines they have, the soils are suitable.

Jaske asked what is the purpose of a county board in this process? Shaver replied it is a policy body and your actions set policy. He stated as your staff their job is to deal with these issues at a professional and technical level and advise you based on your plan, previous policies, past actions in the code, and past actions by (in this case) the Town of Oconomowoc.

Mace stated because of the concerns of the neighbors to the north and east they asked Anders to redesign the subdivision to keep all lots south of the road to create a buffer. With every development in the county, they look at the long term future of what could happen with lands around the piece. In this case they suggested that a right of way be protected and preserved going to the east in the form of a street extension.

Mace said they also were concerned with respect to the greenway corridor that has been endorsed by the county board. In keeping with that, the development has included a strip of land along the north side of the impoundment which will be part of the greenway corridor along the Ashippun River.

Stroud asked do any of the lots have riparian rights? Mace said no. Stroud asked how do enforce the use of non-motorized boats? Kolbeck said the DNR does not allow it. Mace said it is restricted by size as to what can be used on this body of water.

Shaver stated as a department they want to be an advocate for following a good comprehensive planning process. It is easy to be a specialist but when you look at all areas (water quality, transportation, economy) comprehensively there will be conflicts between standards, and these conflicts have to be sorted through. Since 1959 the history and consistency here has been a residential development pattern except for a year or two in early 2000. They need to pay attention

to this as a staff when they make a recommendation. Also, if the Town is feeling a little pressure that is okay because a cooperative planning environment is good for the county and the municipalities in the county to interact on planning issues and strive for consistency.

Kolb made several comments and explained why he will be changing his vote to “yes.” He stated he voted “no” at the Park & Planning Commission of 6/1/06. As he is seeing this now he is very frustrated but there is nothing he can do about it because that is the statute. Now he has to say to himself what is the best he can do under these circumstances. He can’t vote against this because legally there is no precedent. The developer has done everything he needed to do and met the criteria. He really feels that the Town is the closest to the people, and they should have the final say but the law does not allow it.

Mitchell recommended that no one purchase land based just on the land use without getting the rezoning in place. Land use is a guide but there is no timetable on zoning changes. Jaske said she is frustrated with this whole issue. She comes from a farming background and enjoys her open space but when you follow a land use plan and when they made the offer in 2004, the land use plan was not what they are buying today. Jaske said she will be voting “no” today because she wants to study this and probably go over everything about 40 more times in order to understand it all. This is not a short-term decision, and she is very concerned with water issues.

P.Wolff said he lives in a subdivision that is next to a farm. What is wrong with this? Ray Peebles responded there are conflicts between dairy farms and land use. Most of the time it is okay and its more than the smells and noise. But they are walking on broken glass a lot of the time wondering if the people will complain about different things on the farm. Also, there is the lawsuit issue -- if a well gets poisoned, the people will blame the farmer.

The Planning staff is recommending approval subject to nine conditions as outlined in the ordinance and staff recommendation.

Motion: P.Wolff moved, second by Stroud, to approve Ordinance 161-O-027. **Motion carried 4 – 1; Jaske voting no.**

Consider Proposed Ordinance: 161-O-028: (MLG Real Estate 2002 LLC) Village of Mukwonago, Section 35. Part of the SW ¼ of Section 35, T5N, R18E, Village of Mukwonago. Request: Establish zoning for previously unzoned lands as R-3 Residential District and rezone other lands from the C-1 Conservancy District to the R-3 Residential District. Other lands to remain zoned C-1 Conservancy District (SVZ-1595)

Mace reviewed the location of the rezone in the Village of Mukwonago. The proposed land use is for a 107-lot single family residential subdivision, which contains approximately 29.9 acres in Waukesha County. A portion of the project is also located in Walworth County. The proposed subdivision contains approximately a total of 64 acres in both Waukesha and Walworth counties. Mace said the final plat has been approved but it can’t be made effective until the rezone is approved by the County Board. Mace said only a portion of the stream is under the county zoning and this is outlined in the staff recommendation.

Joe Bukovich of MLG Real Estate stated there are a couple of issues being dealt with here. He explained about the floodplain (green line is the floodplain and the blue line is the 75’ setback as part of the county code). Bukovich said in his opinion it is the vertical separation that is more

important. The Planning staff is recommending approval subject to six conditions as outlined in the ordinance and staff recommendation.

Motion: Jaske moved, second by Stroud, to approve Ordinance 161-O-028. **Motion carried 5 – 0.**

Consider Proposed Ordinance: 161-O-029: (Philip and Carol Mainwaring/Anthony and Joann Alioto) Town of Vernon, Section 1. Parts of Lots 2, 3 and 4 of CSM No. 6783, located in part of the NW ¼ of Section 1, T5N, R19E, Town of Vernon. Request: Rezone from the RRD-5 Rural Residential Density District 5 and C-1 Conservancy Districts to the R-1 Residential and C-1 Conservancy Districts (SCZ-1614)

Mace explained the location of the rezone in the Town of Vernon which consists of approximately 12.5 acres. The proposed subdivision contains approximately 24 acres for a ten-lot single family residential subdivision, which includes the two existing single family residences on the east side of the development. The Planning staff is recommending approval subject to 13 conditions as detailed in the ordinance and staff recommendation.

Motion: P.Wolff moved, second by Kolb, to approve Ordinance 161-O-029. Motion carried 5 – 0.

Consider Proposed Ordinance: 161-O-030: (Ertl Investments II, LLC) Town of Lisbon, Section 4. Part of the NW ¼ of Section 4, T8N, R19E, Town of Lisbon. More specifically the property is located approximately 400 ft. east of the intersection of Hwy. 164 and C.T.H. “Q”. Request: Rezone from the A-2 Residential District to the Local Business District (ZT-1625)

Mark Hertzfeldt stated the zoning at the Town level was approved last month and the next step is with the county. He stated that this parcel has been commercial for close to 20 years, but it hasn't been developed. Also, all of the issues that the neighbors had were resolved at the Town level. Mace reviewed the location of the rezoning in the Town of Lisbon. The Planning staff is recommending approval subject to 13 conditions as outlined in the ordinance and staff recommendation.

Motion: Kolb moved, second by Jaske, to approve Ordinance 161-O-030. **Motion carried 5 – 0.**

Consideration of Appeal to the Waukesha County Private Sewage System Code – Big Bend Development, LLC -- This item was held over.

Motion to adjourn: Jaske moved, second by Kolb, to adjourn the meeting at 11:34 a.m. Motion carried 5 – 0.

Respectfully submitted,

Keith Harenda
Secretary

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